

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

April 20, 2021

11:34 a.m.

MEMBERS PRESENT

Representative Ivy Spohnholz, Chair
Representative Adam Wool, Vice Chair
Representative Andy Josephson
Representative Calvin Schrage
Representative Andi Story
Representative Mike Prax
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 1

Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and to appropriations from the Alaska permanent fund.

- MOVED CSSSHJR(W&M) 1 OUT OF COMMITTEE

HOUSE BILL NO. 165

"An Act making a special appropriation to the Alaska permanent fund; and providing for an effective date."

- MOVED HB 165 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HJR 1

SHORT TITLE: CONST AM: PERMANENT FUND; POMV;EARNINGS

SPONSOR(s): REPRESENTATIVE(s) KREISS-TOMKINS

02/18/21	(H)	PREFILE RELEASED 1/8/21
02/18/21	(H)	READ THE FIRST TIME
02/18/21	(H)	SPONSOR SUBSTITUTE INTRODUCED
02/18/21	(H)	READ THE FIRST TIME - REFERRALS
02/18/21	(H)	STA, JUD, FIN
03/10/21	(H)	W&M REPLACES STA REFERRAL
03/10/21	(H)	BILL REPRINTED

04/13/21 (H) W&M AT 11:30 AM DAVIS 106
04/13/21 (H) Heard & Held
04/13/21 (H) MINUTE (W&M)
04/20/21 (H) W&M AT 11:30 AM DAVIS 106

BILL: HB 165

SHORT TITLE: APPROP: EARNINGS RESERVE TO PERM FUND
SPONSOR(S): REPRESENTATIVE(S) KREISS-TOMKINS

04/07/21 (H) READ THE FIRST TIME - REFERRALS
04/07/21 (H) W&M, FIN
04/13/21 (H) W&M AT 11:30 AM DAVIS 106
04/13/21 (H) Heard & Held
04/13/21 (H) MINUTE (W&M)
04/20/21 (H) W&M AT 11:30 AM DAVIS 106

WITNESS REGISTER

DEVEN MITCHELL, Debt Manager
Treasury Division
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SSHJR 1 and HB 165.

CLIFF GROH
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 165.

BERT HOUGHTALING
Big Lake, Alaska

POSITION STATEMENT: Testified during the hearing on SSHJR 1 and HB 165.

ROCKY MCKENZIE
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on SSHJR 1 and HB 165.

CLEM TILLION, Chair
Permeant Fund Defenders
Halibut Cove, Alaska

POSITION STATEMENT: Testified in support of SSHJR 1.

ANDY CIZEK
Soldotna, Alaska

POSITION STATEMENT: Testified in opposition to SSHJR 1.

JEAN HOLT

Palmer, Alaska

POSITION STATEMENT: Testified during the hearing on SSHJR 1 and HB 165.

BERT HOUGHTALING

Big Lake, Alaska

POSITION STATEMENT: Testified in opposition to SSHJR 1.

CLIFF GROH

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SSHJR 1.

CRIS EICHENLAUB

Wasilla, Alaska

POSITION STATEMENT: Testified in opposition to SSHJR 1.

MARY LEE GUTHIRE

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SSHJR 1.

SARRA KHLIFI, Community Advocate

Alaska Children's Trust

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SSHJR 1.

IAN LAING

Institute of the North

Anchorage, Alaska

POSITION STATEMENT: Testified in support of SSHJR 1.

EMILY NAUMAN, Deputy Director

Legislative Legal Services

Legislative Affairs Agency

Juneau, Alaska

POSITION STATEMENT: Answered questions pertaining to SSHJR 1.

JONATHAN KREISS-TOMKINS

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Answered questions pertaining to SSHJR 1, as the prime sponsor.

ACTION NARRATIVE

[11:34:12 AM](#)

CHAIR IVY SPOHNHOLZ called the House Special Committee on Ways and Means meeting to order at 11:34 a.m. Representatives Josephson, Story, Prax, Eastman, and Spohnholz were present at the call to order. Representatives Wool and Schrage arrived as the meeting was in progress.

HB 165-APPROP: EARNINGS RESERVE TO PERM FUND
HJR 1-CONST AM: PERMANENT FUND; POMV; EARNINGS

[11:35:33 AM](#)

CHAIR SPOHNHOLZ announced that the only order of business would be HOUSE BILL NO. 165, "An Act making a special appropriation to the Alaska permanent fund; and providing for an effective date." and SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 1, Proposing amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund and to appropriations from the Alaska permanent fund.

CHAIR SPOHNHOLZ reminded the committee that on April 13, a member had asked whether the state's bond rating would be impacted if the \$4.35 billion contemplated in HB 165 were transferred from the Earnings Reserve Account (ERA) to [the Principle] of the Alaska Permanent Fund. She asked Mr. Mitchell to speak to how the state's fiscal policy and this legislation might relate to Alaska's bond rating.

DEVEN MITCHELL, Debt Manager, Treasury Division, Department of Revenue (DOR), stated that there were two different things being contemplated that would result in a different outcome in tandem compared to their independent implications. He explained that there were competing interests: the interest in having liquidity and the interest in using the permanent fund in a fashion that aligned with other endowment credit rating standards. He emphasized that the credit rating agencies were significantly concerned about the ERA not having sufficient funds due to market "happenings" that could result in negative experience. He said a transfer to the Principle would be viewed with concern from credit rating analysts, as it would result in an increased probability of the ERA being insufficient. Additionally, if SSHJR 1 were to pass, there was concern about the state using the ERA account similarly to the CBR, which historically, was used to solve budget deficits rather than adhering to the standard for endowment draws. To the extent that [HB 165/SSHJR 1] were to be approved by the legislature and the voters, they would provide structure that despite the loss in liquidity,

would increase the likelihood of having the annual draw, he said.

REPRESENTATIVE PRAX asked how making a transfer from the ERA without paying the state's debts, such as the past due permanent fund dividend (PFD) payments, the oil tax credits, and the unfunded PERS/TRS liability, would affect Alaska's credit rating.

MR. MITCHELL replied that a simple transfer of money without some framework adjustment around the percent of market value (POMV) issue would have a negative impact. He added that the state's other obligations had varying degrees of requirement. He shared his understanding that if those specific items remained unpaid, it would not have any additional affect on the impact of that transfer.

[11:43:26 AM](#)

CHAIR SPOHNHOLZ opened public testimony on HB 165 and SSHJR 1.

[11:43:48 AM](#)

CLIFF GROH expressed his support for both HB 165 and SSHJR 1. He explained that his support was based on more than four decades of experience working on Alaska fiscal policy. Further, he noted that he had written more about the creation of the dividend than anyone else. He opined that adoption of the two measures was critical but insufficient in addressing Alaska's fiscal crisis. Enacting HB 165 and SSHJR 1, he said, would help force a solution to the state's giant structural fiscal deficit. Nonetheless, he reiterated that the two measures alone would not solve the problem. He urged the legislature to take other steps, including the passage of legislation, raising additional revenues, and (indisc.) the budget. He restated his support for both measures.

[11:45:28 AM](#)

BERT HOUGHTALING said he was not necessarily against HB 165. He opined that inflation proofing was necessary; however, he suggested lowering the dollar amount to \$1 billion. He believed that transferring such a large amount at this particular time was not a smart idea and would justify the avoidance of paying a statutory dividend or returning last year's "stolen" portion of the PFD.

[11:47:05 AM](#)

CHAIR SPOHNHOLZ closed public testimony on HB 165 [but left public testimony on SSHJR 1 open].

[11:47:10 AM](#)

REPRESENTATIVE PRAX asked which group Mr. Houghtaling represented.

CHAIR SPOHNHOLZ clarified that Mr. Houghtaling was not speaking on behalf of a group.

[11:47:27 AM](#)

The committee took a brief at-ease.

[11:47:40 AM](#)

CHAIR SPOHNHOLZ invited further questions from the committee. Seeing none, she requested a motion on HB 165 from Representative Wool.

[11:47:52 AM](#)

REPRESENTATIVE WOOL moved to report HB 165 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE PRAX objected. He opined that it was not a good time to remove liquidity from the state's assets without taking other measures into consideration.

[11:48:49 AM](#)

REPRESENTATIVE EASTMAN echoed the comments of Representative Prax. He said he believed that it was important to know ahead of time that there were enough votes to pass both measures in tandem rather than finding out later in the process that there was only enough support for a portion of the proposal, which would defeat the intent of the "package." He added that he was skeptical that there were enough votes to pass both pieces of legislation.

[11:49:37 AM](#)

CHAIR SPOHNHOLZ clarified that each of these bills could be addressed independently. She explained that one was a

resolution that would require a vote of the people and had a two-thirds vote threshold, which was a more difficult standard. On the other hand, HB 165 was a simple bill, she said, that only required a majority vote in each body. She opined that HB 165 was more of a short-term measure. Further, she recalled testimony from the Alaska Permanent Fund Corporation (APFC), Office of Management & Budget (OMB), and the Legislative Finance Division (LFD), which clarified that the permanent fund was extremely important to the State of Alaska. She expressed a "huge" concern about the ERA potentially being treated as another reserve account, as it could be spent with a simple majority vote. She shared her belief that the risk of overspending the permanent fund was huge because the ERA was more accessible than other funds that had since been depleted. She emphasized that the strategic importance of the fund necessitated passing both measures.

[11:51:26 AM](#)

A roll call vote was taken. Representatives Wool, Josephson, Story, and Spohnholz voted in favor of moving HB 165 out of committee with individual recommendations and the accompanying fiscal notes. Representatives Eastman and Prax voted against it. Therefore, HB 165 was reported out of the House Special Committee on Ways and Means by a vote of 4-2.

[11:52:00 AM](#)

The committee took an at-ease from 11:52 a.m. to 11:54 a.m.

[11:54:31 AM](#)

CHAIR SPOHNHOLZ returned to public testimony on SSHJR 1.

[11:54:59 AM](#)

ROCKY MCKENZIE shared that he had suffered numerous injuries on the North Slope and relied on the permanent fund to pay for his medical bills. He stressed the necessity of the dividend.

[11:55:48 AM](#)

CLEM TILLION, Chair, Permanent Fund Defenders, shared a personal anecdote and opined that touching the Principal would be a "fatal" error. He expressed his preference for the [original statutory dividend formula] and a 4 percent POMV to allow the

fund to grow. He urged legislators not to use permanent fund moneys to pay off the state's debts.

[11:59:13 AM](#)

CHAIR SPOHNHOLZ asked whether Mr. Tillion supported or opposed SSHJR 1.

[11:59:20 AM](#)

MR. TILLION stated his support for SSHJR 1.

[11:59:35 AM](#)

ANDY CIZEK expressed his opposition to SSHJR 1. He shared his belief that it was enacted "underhandedly" by Governor Mike Walker via the legislature who wasted time during the regular legislative session to "steal" the PFD from the people during special session. He opined that state spending was out of control and that no legislation had been passed to reduce overall spending. Further, he believed that money was being stolen from the people to fund government and special interests via the POMV. He reiterated his opposition to SSHJR 1 and expressed support for the statutory dividend formula.

CHAIR SPOHNHOLZ clarified that SSHJR 1 would constitutionally protect the POMV draw from the permanent fund. She stated that it would restrict the amount of money that could be appropriated from the permanent fund, adding that the proposed resolution was "silent" on the issue of the dividend. She reiterated that the passage of the resolution in its current form would not change the PFD formula.

[12:03:51 PM](#)

JEAN HOLT shared her perspective on the dividend, asserting that the PFD was not an entitlement. She urged the legislature to "get the budget in line" to avoid overspending and reduced dividends.

[12:06:27 PM](#)

BERT HOUGHTALING informed the committee that he was testifying on behalf of the 4,000 followers of his publication. He opined that solidifying the POMV into the constitution would allow the legislature to ignore the statutory dividend in favor of the POMV draw. He stated that he would consider supporting this

resolution if it was written like SJR 1 and constitutionally protected the traditional statutory PFD formula with the inclusion of a POMV draw. He characterized SSHJR 1 in its current form as a systematic theft of the PFD designed to justify the legislature's ability to spend from the ERA for special interests. He suggested cutting the education budget by implementing virtual schooling with an established homeschool program.

[12:08:59 PM](#)

CLIFF GROH, believed that despite being a necessary an important step for Alaska, SSHJR 1 alone would not sufficiently address the overall fiscal crisis. He stated that many people misunderstood how the PFD was created, later noting that the permanent fund was created to save money for the future. He asserted that it was a violation of the historical record to say that the permanent fund was created to pay dividends. He reiterated his support for the proposed resolution along with other measures that would address Alaska's fiscal crisis.

[12:11:04 PM](#)

CRIS EICHENLAUB expressed his opposition to SSHJR 1 and shared his support for the management style of the PFD pre governor Walker. He opined that the state's current situation was due to a mismanagement of resources. He believed that dividends were being "funneled" to special interest that were failing. Additionally, he stated his opposition to the POMV, as it relied on a fluctuating stock market.

[12:14:14 PM](#)

MARY LEE GUTHIRE stated her support for SSHJR 1 and its objective to ensure the sustainability of the permanent fund. She believed that Alaskans' unfamiliarity with paying taxes had led them to be casually informed about the state's fiscal situation and uninformed about the uniquely lucrative period of high oil revenue, as well as the dynamics of the permanent fund investments. She shared her belief the because of the state's debts, the legislative and political incentives would always favor immediate use over long-term goals. She said would like to see if the legislature would get on board with a long-term goal of a light tax burden and building up the permanent fund over time.

[12:16:16 PM](#)

SARRA KHLIFI, Community Advocate, Alaska Children's Trust, stated that the permanent fund had always been recognized as the cornerstone of Alaska's future; however, it was currently at risk of being used unsustainably. She believed that SSHJR 1 would ensure sustainable use of the permanent fund for all generations of Alaskans. She opined that unsustainable spending from the fund was fundamentally unfair to future generations; additionally, that failing to protect the fund today would lead to some combination of more cuts to government services, higher taxes, and the future elimination of PFDs. She shared her understanding that sustainable use of the permanent fund was one part of a fiscal plan that most people agreed on. She emphasized that SSHJR 1 would ensure that the protection of the permanent fund. She reiterated her support for SSHJR 1 in tandem with reliable forms of revenue that would bolster the economy.

12:18:11 PM

IAN LAING, Institute of the North, expressed his strong support for SSHJR 1. He stated his belief that unsustainable spending from the permanent fund was the greatest threat to Alaska, as it would directly dictate the future of the state. He believed the only way to protect against that was through a constitutional amendment. He noted that the permanent fund currently supported 70 percent of state spending, thus making Alaska an endowment state; however, the proper legal protections were not in place to ensure that the endowment would continue to function sufficiently. He explained that the proposed resolution was necessary because there was a 50 percent chance of being unable make the statutory POMV draw over the next 20 years under the current structure. Beyond that, he said the simple financial imprudence of overspending was hard to overstate. He pointed out that it would only lead to higher taxes, greater services reductions, or elimination of dividends. Additionally, he emphasized that the permanent fund was an asset that belonged to all generations of Alaskans. For those reasons, the idea of converting the fund to a constitutional endowment was the oldest, most well-studied, widely supported but unimplemented idea in Alaskan public policy. He said it had always been recognized as the cornerstone of the future. In addition to good policy, he opined that the resolution was the necessary vehicle to resolving the larger fiscal problem, as it would place a deadline on unsustainable spending from the fund and drive negotiations. He said he believed that some form of SSHJR

1 needed to pass, adding that it was the most important factor in a prosperous future for Alaska.

12:22:20 PM

CHAIR SPOHNHOLZ closed public testimony on SSHJR 1.

12:22:32 PM

CHAIR SPOHNHOLZ moved to adopt Amendment 1, labeled 32-LS0167\B.3, Nauman, 4/19/21, which read:

Page 2, following line 2:

Insert a new subsection to read:

"(c) Each fiscal year, the legislature shall appropriate a portion of the amount appropriated under (b) of this section for use in a program of dividend payments to State residents, as provided by law."

Reletter the following subsection accordingly.

12:22:44 PM

REPRESENTATIVE JOSEPHSON objected for the purpose of discussion.

12:22:51 PM

CHAIR SPOHNHOLZ explained that Amendment 1 to SSHJR 1 stipulated that a PFD would be paid from the POMV. She noted that the proposed amendment did not specify the dividend amount, as that was a much larger conversation. She said she was incredibly supportive of SSHJR 1, but it was unlikely to reach the two-thirds vote threshold required to pass the legislature without some form of a dividend. She recalled testimony from the Institute of Taxation and Economic Policy and Alaskans for a Sustainable Budget, which indicated that reducing the permanent fund [dividend] was the most regressive way to fund government. Additionally, she shared her belief that the dividend had been instrumental in protecting the permanent fund. For those reasons, she said, there was value in including a reference to the dividend [in SSHJR 1]. Further, she opined that Amendment 1 did this in a way that would give the legislature maximum discretion to have the conversation about the dividend formula in a separate piece of legislation. She continued to share her observation that the public was frustrated by a lack of clarity and certainty about the PFD formula; however, the PFD discussion would undermine the ability of SSHJR 1 to reach the required

vote threshold to advance to a vote of the people, which was why it was not included.

[12:24:31 PM](#)

REPRESENTATIVE JOSEPHSON maintained his objection.

[12:25:04 PM](#)

REPRESENTATIVE JOSEPHSON pointed out that Amendment 1 would require that the dividend payment be made from the draw. He recalled several years in which the dividend was paid from some other source, such as the CBR. He asked Mr. Mitchell whether losing the flexibility to pay the dividend from another source would matter.

MR. MITCHELL sought clarification as to the objective of Amendment 1. He asked whether it would add a constitutional dividend distribution to SSHJR 1.

REPRESENTATIVE JOSEPHSON confirmed. He said the proposed amendment stated that there would be a dividend, which would be distributed from the 5 percent POMV draw, without declaring the PFD amount.

MR. MITCHELL stated that from a debt perspective, he saw no issue with adding a requirement for the dividend to be paid from the draw; however, he pointed out that a formulaic approach would automatically diminish the flexibility to pay for other things.

[12:27:44 PM](#)

REPRESENTATIVE PRAX expressed his support for establishing a dividend payment in the constitution.

REPRESENTATIVE PRAX [moved to adopt] a conceptual amendment to Amendment 1, such that "a portion of the amount appropriated under (b) of this section" would be deleted and replaced with "the income of the fund".

CHAIR SPOHNHOLZ objected.

[12:28:37 PM](#)

REPRESENTATIVE PRAX explained that he was offering the conceptual amendment because many Alaskans view the PFD as a

right. He stated that the whole permanent fund and the state's resources belong to the people as opposed to "the state." In contention with prior testimony, he argued that Alaska did not have the lowest tax burden because the majority of the income from the state's resources and the permanent fund was appropriated by the legislature, effectively creating a tax on Alaskans. He believed that giving the income back to the people would provide a clean slate for the legislature to begin considering a tax.

CHAIR SPOHNHOLZ asked Representative Prax to repeat the conceptual amendment.

[12:30:24 PM](#)

REPRESENTATIVE PRAX stated that the conceptual amendment to Amendment 1 would delete "a portion of the amount appropriated under (b) of this section for use in" and insert "the income from the fund".

CHAIR SPOHNHOLZ restated her objection. She explained that the conceptual amendment would essentially require that the entire POMV go to PFDs, which was not her intent. She believed that the POMV restriction was critical. Further, she shared her belief that the conceptual amendment would increase the PFD amount and prohibit the legislature from using POMV earnings for the purposes of state government and PFDs. She said that implication was deeply concerning, as 70 percent of the state budget came from the permanent fund.

[12:31:49 PM](#)

REPRESENTATIVE JOSEPHSON expressed his concern with the conceptual amendment because it addressed the income of the fund, whereas the objective of Amendment 1 was to dispense with that. He said the fund would still have an income, but it would stay with the fund. He opined that the conceptual amendment would negate the intent of Amendment 1.

CHAIR SPOHNHOLZ agreed.

[12:32:35 PM](#)

REPRESENTATIVE EASTMAN requested that Representative Prax read the proposed conceptual amendment in its entirety.

CHAIR SPOHNHOLZ suggested that the conceptual amendment be written up to provide further clarity.

[12:32:49 PM](#)

The committee took an at-ease from 12:32 p.m. to 12:39 p.m.

[12:39:40 PM](#)

CHAIR SPOHNHOLZ read the conceptual amendment to Amendment 1 by Representative Prax as follows:

Each fiscal year, the legislature shall appropriate the income from the fund in a program of dividend payments to state residents, as provided by law.

CHAIR SPOHNHOLZ maintained her objection for the reasons stated prior.

[12:40:07 PM](#)

REPRESENTATIVE PRAX confirmed that the conceptual amendment would effectively take the entire income from the fund, as drawn through the POMV, and distribute it directly to the people. He said if this were to pass, his intent would be for the legislature to discuss some form of tax. He said he believed that the conceptual amendment would connect Alaskans to their government.

[12:41:09 PM](#)

REPRESENTATIVE SCHRAGE stated that the permanent fund was created to preserve wealth for current and future generations, adding that the dividend was not explicitly spelled out at the creation of the fund. He opined that while the PFD had a role to play, the fund's sole purpose should not be to pay out dividends, as provided by the conceptual amendment. He opined that with the current price of oil and the low amount of revenue, part of wealth preservation was providing for functional state through state services. He said it did not make sense to utilize the entirety of the fund's income to pay out dividends, as residents would have to use their PFD for things like repairing state infrastructure. He reiterated that he could not support an amendment that would cause the entirety of the appropriation from the fund to go strictly to dividends.

[12:42:25 PM](#)

REPRESENTATIVE JOSEPHSON asked Representative Prax to define "the income of the fund" and questioned whether he was referring to the 5 percent draw.

REPRESENTATIVE PRAX confirmed that he was referring to the 5 percent draw. He said the conceptual amendment would effectively set a POMV distribution of dividends from the permanent fund.

REPRESENTATIVE JOSEPHSON pointed out that the proposed conceptual amendment would create an annual deficit of \$3 billion, further noting that a typical income tax model was \$700 million. He asked how Representative Prax intended to make up for the additional \$2.3 billion.

REPRESENTATIVE PRAX replied, "That would obviously be a discussion the legislature would need to have." He suggested that people could elect to return a portion of their dividend to the state. He reiterated his belief that the permanent fund belonged to the people.

[12:44:08 PM](#)

REPRESENTATIVE WOOL pointed out that instead of proposing a 50/50 split or an 80/20 split, the conceptual amendment offered a 100/0 split; thus, 100 percent of the 5 percent draw would be allocated to dividends, which would provide a PFD of approximately \$4,000 per individual. He said it could be argued that the Alaska Marine Highway System (AMHS), highways, and schools also belonged to the people and if so, the legislature was responsible for maintaining them as well, as opposed to solely the individual checking accounts of Alaskans. He stated that the conceptual amendment would create a massive fiscal crisis, which is why he opposed it.

[12:45:13 PM](#)

REPRESENTATIVE EASTMAN said he interpreted the conceptual amendment differently than his fellow committee members. He directed attention to the language "as provided by law" on line 5, which he understood to mean that if the legislature were to set the statutory dividend at \$1, it would satisfy the amendment. He believed the conceptual amendment was stating that constitutionally, the legislature was constrained to follow the law.

[12:47:14 PM](#)

REPRESENTATIVE STORY asked whether constitutional law trumped statutory law.

CHAIR SPOHNHOLZ answered yes; therefore, the conceptual amendment would outweigh statute and require that the entire POMV go to dividends, which the sponsor had confirmed was his intent.

[12:47:46 PM](#)

CHAIR SPOHNHOLZ asked Ms. Nauman to speak to the conceptual amendment.

[12:48:09 PM](#)

EMILY NAUMAN, Deputy Director, Legislative Legal Services, Legislative Affairs Agency, shared her understanding that to the extent the conceptual amendment required the entire amount of the income of the fund be dedicated to dividends, that would be supreme over any dedication or designation of revenue in statute. She believed there was also a question as to what "as provided by law" meant in this context, as an appropriation bill was also law. She said it was unclear whether "as provided by law" would be satisfied by following the dividend formula in law or simply appropriating any amount for a dividend, which could potentially be considered "as provided by law."

[12:49:34 PM](#)

A roll call vote was taken. Representative Prax voted in favor of the adoption of the conceptual amendment to Amendment 1. Representatives Eastman, Wool, Josephson, Schrage, Story, and Spohnholz voted against it. Therefore, the conceptual amendment to Amendment 1 failed by a vote of 1-6.

CHAIR SPOHNHOLZ resumed the discussion on Amendment 1.

[12:50:28 PM](#)

REPRESENTATIVE WOOL said he was hesitant to add dividend language to the resolution because it would open the door to determining a constitutional amount. He recalled when the pipeline shut down for a period of time last year due to economic reasons. He pondered what would happen if that were to occur again in the future, adding that if the state was limited

to little oil income, it would need every penny from the POMV draw to sustain government services. He said if the resolution were to pass with the current statutory dividend, the legislature would be obliged to pay the statutory formula of approximately \$3,000 per individual. He reiterated his hesitancy to Amendment 1.

[12:52:32 PM](#)

MS. NAUMAN restated her understanding that the language "as provided by law" in Amendment 1 was ambiguous and could be satisfied in two ways: first, by following the statutory dividend formula; and second, with an appropriation bill. She stated that how the court would interpret that language was an open question.

REPRESENTATIVE WOOL inquired about the tax status of the permanent fund.

MS. NAUMAN explained that there was an open question regarding whether requiring a dividend payout from the constitution would jeopardize the overall tax status of the permanent fund. She noted that the permanent fund was not currently subject to federal income taxation; however, it was not clear under what mechanism of federal law the fund was not subject to federal taxation. She said there was a possibility that by requiring a dividend, the basic nature of the fund would be change from one that generally supported government and the people to one more similar to an investment account wherein residents have a right to some portion of that fund. She opined that this type of amendment would not jeopardize the tax status of the fund; however, she said she was not entirely certain. She encouraged researching the potential implications in further detail before making the proposed constitutional change to ensure that it wouldn't change the fund's tax status. She noted that there were options to inquire with the Internal Revenue Service (IRS) before subjecting this amendment to a vote of the people.

[12:55:28 PM](#)

REPRESENTATIVE EASTMAN remarked:

Under the amendment, when it speaks of "a portion of the amount appropriated under (b)", what is the timing of this? Is this such that the appropriation under (b) has taken place and now this amendment's provisions kick in or are these taking place

concurrently? I'd just like to understand what exactly is happening before and after.

[12:56:19 PM](#)

MS. NAUMAN expressed her understanding that in its current form, the bill required the legislature to make a series of appropriations. She characterized it as a cascading appropriation where the legislature would appropriate from the POMV and continue to disperse some of that money to dividends. She said she believed that both appropriations would simultaneously occur within the same bill.

[12:57:05 PM](#)

REPRESENTATIVE EASTMAN asked whether the intent to implement a cascading effect wherein the legislature would make an appropriation from the permanent fund; subsequently, the legislature would use a portion of the appropriated moneys for the dividend program.

CHAIR SPOHNHOLZ confirmed.

REPRESENTATIVE EASTMAN suggested removing the ambiguity that Ms. Nauman spoke to with regard to the language "as provided by law." He sought to clarify whether the language was referring to an appropriation bill or a statute.

CHAIR SPOHNHOLZ replied that she had intentionally left that language ambiguous.

[12:58:12 PM](#)

REPRESENTATIVE PRAX asked whether replacing the word "law" with "statute" would remove the ambiguity.

[12:59:01 PM](#)

MS. NAUMAN speculated that a court would still perceive an appropriation bill as "by statute." In general, she advised against the change suggested by Representative Prax. She pointed out that Article 12, Section 11, of the constitution specifically addressed the term "by law," as it is consistently used throughout the constitution. She opined that introducing a new phrase could be confusing and lead to future litigation. She reiterated that as a drafter, her preference would be to

keep the "by law" language because it's consistent with the constitution.

1:00:02 PM

REPRESENTATIVE JOSEPHSON said he was grateful for the amendment, as it had generated a thoughtful dialogue. Nonetheless, he said his concern stemmed from thinking about conversations that took place in the capital building in 2017 when the idea of a POMV draw gained momentum. At the time, there was billions in the CBR, and the legislature had not "tested the taxation water." Further, he recalled thinking that a 75/25 split might be plausible. He highlighted that there was currently \$1 billion in the CBR, half of which needed to be preserved for cash flow purposes. He opined that even a 90/10 split, which would provide \$300 million for the PFD, would be "insulting" to many Alaskans; furthermore, it would not be affordable unless there was evidence to the contrary. He concluded that for those reasons, he was concerned about guaranteeing [the dividend] in the proposed resolution.

1:02:14 PM

REPRESENTATIVE EASTMAN asked how the language "the legislature shall appropriate" was any different than the current process of paying dividends. For example, if the legislature did not appropriate these funds to the dividend program, he asked whether that would create a "cause for action" from the public against the legislature.

MS. NAUMAN shared her understanding that per Amendment 1, the legislature would be required to make an appropriation. She explained that currently, the legislature had some flexibility in its appropriations for dividends because of the dedicated funds clause under Article 9, Section 7 of the constitution. She believed that with the addition of this to the constitution, the legislature would be required to appropriate some amount for a dividend; further, if the appropriation was not made, a person who would have otherwise received a dividend would have a solid case against the legislature for failing to meet the constitutional requirements.

REPRESENTATIVE EASTMAN considered a scenario in which an individual sued the legislature for lack of action and in response, the legislature distributed a dividend of \$1. He asked whether that would resolve the cause for action.

MS. NAUMAN noted that Legislative Legal Services liked to shy away from hypotheticals for a reason. She surmised that an outcome of such a case would depend on the evidence presented and refer to some of the committee discussions about legislative intent.

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REPRESENTATIVE STORY asked the sponsor of SSHJR 1 to share his thoughts on Amendment 1.

[1:05:39 PM](#)

JONATHAN KREISS-TOMKINS, Alaska State Legislature, prime sponsor of SSHJR 1, said he was deferential to the will of the committee. He opined that the process was the most important thing to get a sense of different ideas and lines of support for the purpose of reaching a vote threshold of two-thirds, which was requisite for any solution.

CHAIR SPOHNHOLZ observed that there was a wide range of opinions about the purpose and role of the dividend. She emphasized that she was a believer in the PFD; additionally, that flexibility was needed to address the PFD formula. She opined that Amendment 1 would provide certainty for Alaskans who believe in the dividend program, which was an important value statement. She continued to explain that reaching a two-thirds vote on the House and Senate floor would require votes from both believers in the POMV and believers in the PFD. She shared her belief that both were not mutually exclusive, as it was possible to have a hard constitutional POMV and a commitment to a PFD. She said her intention was to strike a compromise between constitutionalizing the POMV and expressing a commitment to the dividend. She reiterated her belief that without some PFD reference, the resolution would not pass the legislature.

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A roll call vote was taken. Representatives Prax, Story, and Spohnholz voted in favor of the adoption of Amendment 1. Representatives Eastman, Wool, Josephson, and Schrage voted against it. Therefore, Amendment 1 failed by a vote of 3-4.

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CHAIR SPOHNHOLZ invited additional comments from the committee.

[1:09:52 PM](#)

REPRESENTATIVE EASTMAN suggested eliminating paragraph (b) under Section 30 of SSHJR 1, as the amendments could not feasibly apply to appropriations made for the fiscal year ending June 30, [2023].

CHAIR SPOHNHOLZ pointed out that Representative Eastman had not formally submitted this change by the amendment deadline, which had already passed. She said she would entertain the discussion; however, she characterized the lateness of this conceptual amendment as obstructionist.

REPRESENTATIVE KREISS-TOMKINS deferred to Ms. Nauman for an analysis on the chronology of paragraph (b) on page 2.

MS. NAUMAN acknowledged that there may be an issue with the timing. She stated that if SSHJR 1 were to pass, it would be on the ballot in November 2022. She shared her understanding that the legislature could make that appropriation retroactive. She suggested that the 2021 date on line 11 of page 2 should be updated to 2022.

REPRESENTATIVE KREISS-TOMKINS said he would not object to changing 2021 to 2022 on page 2, line 11.

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REPRESENTATIVE EASTMAN moved to adopt Conceptual Amendment 2 to SSHJR 1, such that lines 11-13 would be deleted on page 2.

CHAIR SPOHNHOLZ objected for the purpose of discussion. She asked why Representative Eastman was not proposing to change the date, 2021, on line 11 to 2022.

REPRESENTATIVE EASTMAN agreed that "The 2021 amendments" on line 11 should be labeled as "The 2022 amendments"; however, the amendments should not be made to apply to something that happened before they were put into the constitution.

[1:14:22 PM](#)

CHAIR SPOHNHOLZ shared her understanding that this particular sequence was about the transition of implementation. She presumed that if the amendments passed in 2022, they would apply to appropriations made for the fiscal year ending 2023. She

opined that removing the entire provision did not make sense; further, that changing the date on line 11 would suffice.

REPRESENTATIVE EASTMAN stated his understanding that once the amendments were added to the constitution, they would become relevant to all appropriations made after that point if the provision was eliminated.

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MS. NAUMAN explained that paragraph (b) was intended to provide transition language. She stated that if paragraph (b) was eliminated, the fiscal year SSHJR 1 applied to may be in question. She suggested that another option could be to bump the dates back an additional year. Alternatively, the legislature could potentially put in contingent appropriations if SSHJR 1 made it on the ballot to deal with the possibility of it passing.

CHAIR SPOHNHOLZ opined that changing the dates would be preferable to eliminating the entire paragraph.

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REPRESENTATIVE EASTMAN withdrew his motion to adopt Conceptual Amendment 2.

REPRESENTATIVE EASTMAN moved to adopt [Conceptual Amendment 3] to SSHJR 1, such that "2021" on page 2, line 11, would be changed to "2022", and "2023" on page 2, line 12, would be changed to "2024". There being no objection, Conceptual Amendment 3 was adopted.

CHAIR SPOHNHOLZ invited final comments from the committee.

[1:17:22 PM](#)

REPRESENTATIVE EASTMAN noted that he would be voting against moving the proposed resolution from committee because he did not believe it would have a positive impact on the dividend.

CHAIR SPOHNHOLZ clarified that there was nothing in the resolution that precluded the legislature from paying out a statutory PFD. She pointed out that, unfortunately, Representative Eastman had voted against Amendment 1, which would have required the payment of a dividend. Nonetheless, she said she supported SSHJR 1, [as amended], and thanked the bill

sponsor for introducing it. She believed the single most important thing that could be done for the future of Alaska was to protect the permanent fund from being overdrawn.

REPRESENTATIVE SCHRAGE expressed his strong support for SSHJR 1, [as amended]. He stated that the resolution would ensure the protection of the permanent fund for future generations.

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REPRESENTATIVE WOOL moved to report SSHJR 1, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE EASTMAN objected.

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A roll call vote was taken. Representatives Story, Wool, Josephson, Schrage, and Spohnholz voted in favor of reporting SSHR 1, as amended, out of committee. Representatives Prax and Eastman voted against it. Therefore, CSSSHJR 1(W&M) was reported out of the House Special Committee on Ways and Means by a vote of 5-2.

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CHAIR SPOHNHOLZ remarked on the committee's upcoming schedule.

[1:21:02 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 1:21 p.m.